CITY OF
LONG BEACH

Health and Human Services
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R-9

February 9, 2021

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Request the City Attorney to prepare an Ordinance (1) amending Chapter 5.81 of the Long Beach Municipal Code ("Tobacco Retail Permit") to prohibit the sale of all flavored tobacco products, except for those products sold at hookah lounges and premium cigars under certain conditions, within the City, and (2) repeal Chapter 5.94 of the Long Beach Municipal Code ("Sale of Certain Flavored Tobacco Products") temporarily prohibiting the sale of certain flavored tobacco products within the City of Long Beach. (Citywide)

DISCUSSION

On December 3, 2019, the City Council adopted Chapter 5.94 of the Long Beach Municipal Code (LBMC) prohibiting the sale of certain flavored tobacco products, including flavored cigarillos, flavored electronic smoking devices, flavored electronic smoking device fluid, and menthol cigarettes. As of January 4, 2021, LBMC Chapter 5.94 has expired.

In August 2020, the California legislature passed Senate Bill 793 (SB 793) to ban the sale of flavored tobacco products statewide. The ban prohibits the sale of all flavored tobacco products in California with the exemption of hookah and premium cigars under certain conditions. SB 793 is a more comprehensive ban than the temporary ban implemented in Long Beach, covering a wider array of flavored tobacco products such as flavored smokeless tobacco products.

SB 793 was slated for implementation starting January 1, 2021. However, implementation has been postponed pending the outcome of a referendum slated for the 2022 statewide election. Pending the outcome of the referendum for SB 793, the City's Department of Health and Human Services (Health Department) strongly recommends that the City Council takes immediate action to adopt a permanent prohibition of the sale of all flavored tobacco products in the City except for hookah lounges and premium cigars under certain conditions, as outlined in SB 793, to protect the public health of our community.

The Health Department recommends adding the permanent prohibition on the sale of flavored tobacco products to LBMC Chapter 5.81 and repealing LBMC Chapter 5.94 to allow all regulations for the retail sale of tobacco products to be included in one place, which will make compliance easier for retailers and enforcement easier for staff.

Since LBMC Chapter 5.94 has expired and retailers have been able to sell flavored tobacco products for the month of January and February, staff recommend a three-month moratorium on the enforcement of the amended flavored tobacco ban to allow retailers to sell off any newly

acquired flavored tobacco products. Furthermore, staff recommend that any City's flavored tobacco ordinance aligned with SB 793 automatically repeals if and when SB 793 becomes effective.

As of December 2020, over 60 jurisdictions in California currently regulate the sale of flavored tobacco products and many more are currently working on similar ordinances. These include local jurisdictions such as Los Angeles County, and are consistent with recommendations from the Centers for Disease Control and Prevention (CDC) and the Surgeon General.

Nationwide, youth e-cigarette use has significantly increased, nearly 20-fold in less than 10 years (from 1.5 percent in 2011 to 23.6 percent in 2020). Flavored tobacco products play a major role in the rise in youth initiation and their continued use of e-cigarettes. In addition, flavors mask the taste of tobacco and make it easier for new users to initiate tobacco use and create the false impression that a tobacco product is less harmful than it really is, leading to increased nicotine intake. As of 2017, there were more than 15,500 unique e-cigarette flavors available online in youth-friendly flavors such as cotton candy, gummy bear, and juice box. Of youth who have ever used a tobacco product, 81 percent initiated tobacco consumption with a flavored product, including vaping. Nicotine changes adolescents' brain cell activity in the parts of the brain responsible for attention, learning, and memory. The younger a person is when they start using nicotine, the more likely they are to become addicted and the more difficult it is for them to quit.

Flavorings in e-cigarettes can pose their own health risks. According to the Surgeon General, some of the flavorings found in e-cigarettes have been shown to cause serious lung disease when inhaled. Compounds that have been approved for ingestion are not proven safe to be heated and inhaled, and the heating process creates additional harmful chemicals. At least 10 chemicals identified in e-cigarette aerosol are on California's Proposition 65 list of carcinogens and reproductive toxins.

Concerns around youth uptake and health effects of flavored tobacco products are exacerbated by a lack of regulation and inadequate labeling of e-cigarettes. E-cigarette products are not regulated by the Food and Drug Administration (FDA) and are not yet subject to manufacturing standards leading to a wide variability in the type of vape products available on the market. The quality and content of ingredients varies among brands, as does the level and concentration of nicotine in e-liquid. In fact, labeling is not a reliable indicator of nicotine content as studies have found that incorrect labeling poses significant risk to consumers. In 2018, studies found that 91 percent of the e-liquids marketed as "nicotine-free" contained various levels of nicotine.

The FDA found that menthol cigarettes pose more of a risk than traditional cigarettes because menthol users may be inclined to smoke more due the masking nature of the mint flavor. Additionally, an analysis conducted by the Truth Initiative found that partial flavor bans that exclude menthol as a flavor increase the risk of flavored tobacco users switching to menthol tobacco products.

Menthol cigarettes are disproportionally used by youth, women, members of the LGBT community, and communities of color. As an example, 70 percent of African American adults who smoke use menthol cigarettes as compared to only 18 percent of White adult cigarette smokers. According to tobacco industry documents, historically, tobacco companies have aggressively marketed menthol products in urban, low income, African American neighborhoods. In recent studies, menthol products and advertisements continue to be more prevalent in communities of color and low-income communities.

The rise of flavored cigars among youth is also of equal concern as each day, more than 1,400 kids try cigar-smoking for the first time. Similar to vape products, cigars are marketed in a range of flavors that are attractive to children such as candy, fruit, and chocolate. Additionally, chemicals used in flavored cigars are the same flavorings used in popular candy and drink products commonly consumed by kids. With flavored cigars being undertaxed in comparison to traditional cigarettes, cigars are a less expensive option for youth and young adult consumption.

In addition to the inherent risk of tobacco, cigar, and vape use, there is an emerging concern in regard to adverse outcomes associated with COVID-19 for users of tobacco products. In August 2020, researchers at the Stanford University School of Medicine conducted a study that shows teenagers and young adults who vape face a higher risk of developing COVID-19. The research determined that among young people who were specifically tested for COVID-19, participants who used e-cigarettes were five times more likely to be infected with the virus, in comparison to their peers who did not vape. Furthermore, information from Massachusetts General Hospital states that individuals who use e-cigarettes are at a higher risk of developing long-term lung diseases; these respiratory diseases, coupled with the fact that menthol and other tobacco flavorings found in e-cigarettes increase the severity of lung-related illness, may make it difficult for e-cigarette users to recover should they contract COVID-19. Vaping not only causes damages to the lungs, but also has detrimental effects on the body's white blood cells. These effects on the body make it difficult to fight viral infections and consequently makes it easier for viruses such as COVID-19 to affect lung function.

Use of e-cigarette devices can also increase the spread of COVID-19. Vaping is a social activity that involves exhaling forcibly. This may propel droplets that carry viral particles from one individual to another. Where the CDC affirms that face coverings such as masks are a critical tool in fighting against the spread of COVID-19, note that acts such as vaping are incompatible with wearing a mask, therefore further increasing the risk of infection within communities. Overall, smoking and vaping are an increased concern to individual and public health during the COVID-19 pandemic.

Attachment A is a list of reference materials used to gather information and data included in this staff report.

This matter was reviewed by Deputy City Attorney Taylor M. Anderson on January 20, 2021 and by Revenue Management Officer Geraldine Alejo on January 25, 2021.

TIMING CONSIDERATIONS

Per the terms of the Ordinance, the temporary ban would expire one year from implementation unless extended by the City Council. The Ordinance was implemented on January 3, 2019 and expired on January 3, 2021. City Council action is requested on February 9, 2021, to repeal LBMC Chapter 5.94 and amend LBMC Chapter of 5.81 to include a permanent ban on the sale of certain flavored tobacco products in Long Beach.

FISCAL IMPACT

The total annual cost of implementing a ban on certain tobacco products is estimated at $110,000 and includes staff time related to inspections and enforcement. The cost to initially implement the ban was funded within current resources supported by inspection and permit fee revenue from the Health and Human Services Department's Tobacco Retail Enforcement Program (TREP), as well as grant funding received from the Department of Justice. Funding for the temporary ban is appropriated in the Health Fund Group in the Health and Human Services Department. Ongoing funding sources to support a permanent ban have not yet been identified and may include potential TREP fee increases to fund ongoing costs. If needed, the department will return to the City Council as part of the budget process with a request for appropriations and proposed fee changes. This recommendation has a minimal staffing impact beyond the normal budgeted scope of duties and is consistent with the existing City Council priorities. There is no local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

KELLY COLOPY
DIRECTOR
HEALTH AND HUMAN SERVICES

APPROVED:

THOMAS B. MODICA
CITY MANAGER

Attachments: Attachment A – References

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